
**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

R.S.A. No. 3884 of 1999

Date of decision : 28.6.2010

Sunil Kumar

....Appellant

Versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE S. D. ANAND

Present: Mr. Amit Jain, Advocate for the appellant.

Mr. Sandeep Moudgil, Deputy Advocate General, Punjab

S. D. ANAND, J.

It is beyond the pale of controversy that the plaintiff-appellant had overshoot employment for a period of 240 days when he was served with the quit notice (Ex.D4 on the Trial Court record). The plea raised by the plaintiff-appellant, for invalidation of the impugned termination, found favour with the learned Trial Court which held the impugned removal was invalid because it stigmatized the employee without his having been afforded an opportunity of disproving the charge in an enquiry. The learned Trial Court further held that the plaintiff-appellant was, however, "not entitled to declaration to the effect that he is permanent employee or that he is entitled to be regularised in service. Qua the claim for back wages, the learned Trial Court held that he was not "entitled to full pay and emoluments for the period for which he has remained out of service."

In appeal, however, the finding was reversed by the learned 1st Appellate Court by observing that the suit was not maintainable in the Civil Court and that the matter was triable only under the Industrial

Disputes Act. It was also held that the plaintiff-appellant was estopped from filing the present suit as he was not a regular employee.

The plaintiff-appellant is in appeal against the judgment and decree dated 1.8.1998.

At the very outset, the plaintiff-appellant has made a statement that he will not claim even a penny of the arrears in case the appeal is allowed. The appellant has been identified by learned counsel representing him.

It is apparent from a perusal of Ex. D4 that the termination of the plaintiff-appellant was ordered by the employer on an allegation of his having remained absent from job by not joining duty at a place to which he had been transferred. It was also the charge that the plaintiff-appellant had disobeyed the lawful order given by the concerned Sub Divisional Officer. The further charge indicated therein was that the appellant-plaintiff had 'ghereod' the Sub Divisional Officer in his office with the help of his co-workers ("it is reported that you were deputed to work in spillway concreting Division with effect from 1.8.91 and knowingly disobeyed the lawful and reasonable orders of SDO Protection works Sib Division No.1, Shahpurkandi and refused to work as desired by him. You had also "ghereoed" the above mentioned officer in his field office in combination with your co-workers which amounts to gross-misconduct on your part"). The comments furnished by the plaintiff-appellant were found to be unsatisfactory and his services were terminated. No enquiry into the allegations is averred to have been held.

There can, thus, be no escape from the conclusion that it was not a case of innocuous termination and that the termination stigmatized the plaintiff-appellant.

The impugned order cannot, thus, be affirmed.

Insofar as the aspect of jurisdiction is concerned, the law on the point was authoritatively laid down by the Apex Court in **Rajasthan SRTC & Ors Vs. Mohar Singh 2008(3) RCR (Civil) 695**. The Apex Court held as under:-

“Civil Court may have a limited jurisdiction in service matters but it cannot be said to have no jurisdiction at all to entertain a suit. It may not be entitled to sit in appeal over the order passed in the disciplinary proceedings or on the quantum of punishment imposed. It may not in a given case direct reinstatement in service having regard to Section 14(1)(b) of the Specific Relief Act, 1963 but, it is a trite law that where the right is claimed by the plaintiff in terms of common law or under a statute other than the one which created a new right for the first time and when a forum has also been created for enforcing the said right, the Civil Court shall also have jurisdiction to entertain a suit where the plaintiff claim benefit of a fundamental right as adumbrated under Article 14 of the Constitution of India or mandatory provisions of statutes or statutory rules governing the terms and conditions of service.”

It follows therefrom that the Civil Court did have the jurisdiction to try the suit.

In the light of foregoing discussion, this regular second appeal shall stand allowed. The judgment and decree dated 1.8.1998 of the learned 1st Appellate Court shall stand set aside. The judgment and decree dated 26.3.1994 granted by the learned Trial Court shall stand restored with the modification that the plaintiff-appellant shall not be

entitled to even a penny of the arrears which may otherwise have accrued to him on account of invalidation of the impugned termination. The invalidation of the impugned order notwithstanding, it will be open to the competent authority to proceed further in the matter in accordance with law, completely unfazed by whatever observations may have been made by this Court.

Disposed of accordingly.

June 28, 2010
Pka

(S. D. ANAND)
JUDGE